

IN THE COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.

CRIMINAL WRIT PETITION No.244 OF2006.

Mr.Nikhil Nityanand Wagle & Anr. Petitioners.
Versus.
State of Maharashtra & Ors. Respondents.

Mr.S.L.Maneshinde i/b H.S.Nappanai
Mr. S.R. Shinde, A.P.P.
Mr. Vijay Pradhan Advocate i/b R. Satyanarayan for
respondent no.2.

CORAM: - R.S.MOHITE.J.
DATED: - 13/03/2006

P.C. :-

. Heard.

. Rule. By consent of parties rule made returnable
forthwith.

. Petition has been filed by the petitioners who are
the original accused in Criminal Case No. 670/PW/2005
pending on the file of the Additional Chief Metropolitan
Magistrate, 5th Court, Dadar Mumbai. Petitioner no. 1 is
the real brother of present Respondent no.2 Mrs. Asha
Wagle. Petitioner No.2 is the Managing Director of the
Company of which petitioner no.1 is Chairman. There is a
family dispute relating to succession of the family
property originally belonging to parents of petitioner
no.1. In a purported settlement of the said dispute two

cheques were handed over by the present petitioner no.1 to respondent no.2. One of the cheque was encashed and regarding the second cheque, a suit came to be filed in this Court alleging that cheque was obtained under duress. It appears that in the said suit, one other sister of petitioner no.1 by name Nandita Wagle was added as a party defendant and ultimately by Consent Terms dated 18th October, 2005, the parties agreed to refer the subject-matter of the said suit to Arbitration. Both the petitioners were the original plaintiffs in the said suit.

. Clause [F] of the Consent Terms recorded an agreement between the parties to get Criminal Complaint No.2470/Misc.of 2002, quashed.

. In view of the Consent Terms suit was disposed off and the matter is now before a panel of Arbitrators.

. In pursuance of clause [F] of the Consent Terms, the present petition has been filed for quashing of the Criminal Complaint.

. The Advocate appearing for respondent no.2 states that there are several contentions, references and allegations made in the petition, touching to the subject matter of arbitration to which he cannot accede. He, however, states that the Criminal Complaint may be quashed on the sole basis of the clause in the consent terms if the petitioners without prejudice to their rights and contentions in the Arbitration Proceedings withdraw all contentions, allegations and references. The Advocate for

the petitioners agrees to do so.

. In the circumstances, without accepting or making any comments on the contentions, allegations and references made in the petition and without prejudice to the rights and contentions of both the parties in the Arbitration Proceedings, the present Criminal Writ Petition is allowed. Rule is made absolute in terms of prayer clause (a).

. Petition stands disposed off accordingly.

R.S.MOHITE.J.